

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MIKE HARRIS and JEFF DUNSTAN,)
individually and on behalf of)
a class of similarly situated)
individuals,)
)
 Plaintiffs,)
 vs.) Case No. 1:11-5807
)
COMSCORE, INC., a Delaware)
corporation,)
)
 Defendant.)

*** CONFIDENTIAL -- ATTORNEYS' EYES ONLY ***

The 30(b)(6) deposition of COMSCORE, INC. by MICHAEL BROWN, called for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before JENNIFER L. WIESCH, CSR No. 84-4528, a Notary Public within and for the County of Will, State of Illinois, and a Certified Shorthand Reporter of said state, at 350 North LaSalle Street, Suite 1300, Chicago, Illinois, on the 15th day of August, A.D. 2012, at 9:36 a.m.

Job No: 26674

A P P E A R A N C E S:

On behalf of Plaintiffs:

EDELSON MCGUIRE, LLC

350 North LaSalle, Suite 1300

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BY: RAFEY S. BALABANIAN, ESQ.

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On behalf of Defendant:

QUINN EMANUEL URQUHART & SULLIVAN, LLP

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Chicago, Illinois 60661

312-705-7400

BY: ANDREW SCHAPIRO, ESQ.

andyschapiro@quinnemanuel.com

ROBYN M. BOWLAND, ESQ.

robynbowland@quinnemanuel.com

ALSO PRESENT:

MR. THOMAS S. CUSHING III,
comScore Deputy General Counsel and
Privacy Officer;

MR. AMIR MISSAGHI, Summer Associate.

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MICHAEL BROWN

(WHEREUPON, the witness was duly
sworn.)

MR. BALABANIAN: This is the deposition and
oral examination of defendant comScore's witness
designated under Federal Rule of Civil Procedure
30(b)(6), pursuant to notice and continued by
agreement of the parties.

MICHAEL BROWN,
called as a witness herein, having been first duly
sworn, was examined and testified as follows:

EXAMINATION

BY MR. BALABANIAN:

Q. I'd like to go over a few ground rules,
Mr. Brown. My name is Rafey Balabanian. I am an
attorney for plaintiffs, Mike Harris and Jeff
Dunstan. I'm joined to my left with Ben Thomassen,
who's also an attorney for plaintiffs, and Chandler
Givens sitting next to Ben, another attorney, and
then my summer associate, Amir Missaghi.

I just want to talk about a couple ground
rules before we get into the questioning and
whatnot. Have you ever been deposed before?

A. I have.

Q. Okay. So I need verbal answers from you.

1 MICHAEL BROWN

2 A. Panelists are people that have accepted
3 and consented to install our software, take part of
4 our research program.

5 Q. Okay. And when you say "our software,"
6 who's "our"? Who are you referring to?

7 A. comScore's.

8 Q. comScore's software. Okay. Does
9 comScore's software have any kind of technical name?

10 A. Yes.

11 Q. What is that name?

12 A. Internally we refer to that code as the
13 OSSProxy project. It's also sometimes referred to
14 as CProxy. That's the two generic names within
15 engineering.

16 Q. You've mentioned you've been deposed
17 before?

18 A. Yes, sir.

19 Q. Have you ever been a defendant in a
20 lawsuit?

21 MR. SCHAPIRO: Personally or --

22 MR. BALABANIAN: Personally.

23 BY THE WITNESS:

24 A. Yes.

25

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1 MICHAEL BROWN

2 Q. What other things?

3 A. Knowing that they were in existence from
4 having conversations with internal attorneys.

5 MR. BALABANIAN: I want to take a break.

6 (WHEREUPON, a recess was had from
7 10:59 a.m. to 11:11 a.m.)

8 BY MR. BALABANIAN:

9 Q. Mr. Brown, I just want to close out a
10 couple things that we talked about, that we were
11 talking about. And I think I want to cover the
12 obvious, but you said that comScore designed
13 OSSProxy, and you said TMRG did not, VoiceFive did
14 not. I don't know if I asked you if
15 CreativeKnowledge did or did not. Would you -- do
16 you have an answer to that?

17 A. comScore designed OSSProxy.

18 Q. Solely?

19 A. Yes.

20 Q. Okay. So none of its subsidiaries
21 designed it?

22 A. Correct.

23 Q. Okay. Do any of comScore's subsidiaries,
24 the ones we just named or others, do they receive
25 data from OSS -- gathered by OSSProxy?

1 MICHAEL BROWN

2 A. Sir, we discussed multiple different
3 companies, so --

4 Q. Well, take them one by one.

5 A. Thank you, sir.

6 Q. That's easier.

7 A. Appreciate that.

8 Q. TMRG, Incorporated, do you know whether
9 TMRG, Incorporated ever received panelist data? Let
10 me withdraw that real quick. I want to clarify a
11 couple of things. When I talk about panelists today
12 going forward, I'm talking about software panelists,
13 I'm not talking about survey panelists.

14 A. Okay.

15 Q. Okay?

16 A. Thank you.

17 Q. So when I say panelists, I'm talking
18 about software panelists, those individuals who
19 have --

20 A. So from this point forward, until
21 anything else changes, the definition of a panelist
22 is panelists with comScore's software on them?

23 Q. On their system, correct. Okay?

24 A. Yes. Thank you for the clarification.

25 Q. So with respect to TMRG, do you know

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MICHAEL BROWN

whether that company ever receives panelist data
from OSSProxy?

A. No.

Q. What about VoiceFive, is your answer that
you don't know or that, no, they don't receive
panelist data?

A. No, they don't receive panelist data.

Q. Okay. How about VoiceFive Networks, do
you know whether they receive panelist data from
OSSProxy?

A. The company does not.

Q. Does not. What about CreativeKnowledge,
Incorporated, same question?

A. The company does not.

Q. What about Knowledge Networks,
Incorporated, same question?

A. The company does not.

Q. Sears Holding Management Corp., I think
you said you don't know if that's a comScore
subsidiary?

A. I don't know about that.

Q. Okay. So you don't know one way or
another whether they would receive panelist data --

A. That is correct.

1 MICHAEL BROWN

2 Q. -- from OSSProxy? Okay.

3 With respect to TMRG, do you know whether
4 they deploy OSSProxy to potential panelists, whether
5 they offer to deploy it to potential panelists?

6 A. I'm thinking, sir. Sorry, can I ask you
7 to repeat the question again, sir?

8 Q. Sure.

9 A. I'm sorry.

10 Q. Why don't we rephrase it slightly. Might
11 make it easier.

12 A. Thank you.

13 Q. Does comScore deploy OSSProxy directly to
14 panelists, or is it done through the subsidiaries?

15 A. comScore deploys the software.

16 Q. Directly to its panelists?

17 A. Yes.

18 Q. Okay. So I said the word deploy. What's
19 your understanding of that word?

20 A. My understanding of that word in the
21 context of the question is that it validates terms
22 of service that have been accepted, downloads the
23 software, it installs the software, configures the
24 software to operate properly on that machine,
25 maintains that software.

1 MICHAEL BROWN

2 Q. Okay. Right. So let's take it one at a
3 time.

4 MR. BALABANIAN: Actually, can you read back
5 his answer.

6 (WHEREUPON, the record was read by
7 the reporter.)

8 BY MR. BALABANIAN:

9 Q. So with respect to confirming that a
10 panelist has accepted the terms of service of
11 OSSProxy, comScore directly confirms that a panelist
12 has accepted the terms of service of OSSProxy;
13 correct?

14 A. Yes.

15 Q. With respect to the installation of the
16 software on the panelist's system, comScore is the
17 company that is responsible for installing the
18 software onto its panelists' systems; correct?

19 A. Yes.

20 Q. With respect to the download of the
21 software, to the extent that's any different than
22 the installation of the software, onto panelists'
23 systems, comScore ensures that the software has been
24 downloaded; correct?

25 A. Yes.

1 MICHAEL BROWN

2 Q. With respect to configuring OSSProxy onto
3 panelists' systems, comScore's responsible for such
4 configurations; correct?

5 A. Yes.

6 Q. With respect to the maintenance of
7 OSSProxy on panelists' systems, comScore is
8 responsible for maintaining OSSProxy on those
9 systems; correct?

10 A. Yes.

11 Q. The subsidiaries that we went through,
12 TMRG, VoiceFive Networks, CreativeKnowledge,
13 Knowledge Networks, Incorporated, do they have any
14 role based on your understanding of confirming that
15 the terms of service have been accepted by panelists
16 for OSSProxy?

17 A. They do have a role.

18 Q. What role?

19 A. Within the panelists, we have multiple
20 brands, and those -- the OSSProxy is installed
21 respective to the brand that is associated to those
22 entities.

23 Q. Okay. But how does that answer my
24 question with respect to them confirming a
25 panelist's acceptance of OSSProxy?

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1 MICHAEL BROWN

2 A. I'm unclear on that.

3 Q. Okay. 88Circle, does that run -- did
4 that -- does that run OSSProxy?

5 A. Yes.

6 Q. PremierOpinion, does that run OSSProxy?

7 A. Yes.

8 Q. KN Connection, does that run OSSProxy?

9 A. Yes.

10 Q. Impact Network Online, does that run
11 OSSProxy?

12 A. Yes.

13 Q. So all of these various brands run the
14 same software?

15 A. Yes.

16 Q. Okay. Which is all OSSProxy?

17 A. Yes.

18 Q. So with respect to the software itself
19 spread across the various brands, the difference is
20 the brand names?

21 A. No.

22 Q. Okay. There are other differences?

23 A. Yes.

24 Q. What are the differences between
25 RelevantKnowledge -- OSSProxy that runs on --

1 MICHAEL BROWN

2 withdrawn.

3 What are the differences in OSSProxy as
4 it relates to RelevantKnowledge and OpinionSquare?

5 A. There are none.

6 Q. There are none. What are the differences
7 between RelevantKnowledge -- sorry.

8 What are the differences between OSSProxy
9 as it relates to RelevantKnowledge and
10 PermissionResearch?

11 A. None.

12 Q. Well --

13 A. Just add a clarification to this, and I
14 think I talked about this earlier in the deposition,
15 if that's cool, acceptable.

16 Q. Go ahead.

17 A. When the software is installed, it's
18 installed with respect to the respective brand. So,
19 for example, the icon is consistent with the brand,
20 the name is consistent with the brand --

21 Q. Okay.

22 A. -- so --

23 Q. So --

24 A. But the -- so the core software is the
25 same, it's just there's brand specific --

1 MICHAEL BROWN

2 Q. Got it. So --

3 A. I just want to add that in there when
4 you're asking the question.

5 Q. I understand, and it helped. Aside from
6 your qualification, there are no other real
7 differences amongst the brands?

8 A. In regard to the software, that is true.

9 Q. Correct. Okay.

10 THE WITNESS: Sir, do you mind, when it's
11 convenient, it's not an urgent, I'd like to take a
12 small break for -- visit the restroom.

13 MR. BALABANIAN: Then we'll take one.

14 THE WITNESS: Thank you so much.

15 (WHEREUPON, a recess was had from
16 11:38 a.m. to 11:44 a.m.)

17 BY MR. BALABANIAN:

18 Q. I want to talk about the ways in which
19 panelists download OSSProxy onto their systems.
20 Okay?

21 A. Okay.

22 Q. My understanding is there's -- there's
23 basically two ways that a panelist can download
24 software, the OSSProxy software, onto their system
25 either directly from comScore or one of its

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MICHAEL BROWN

MR. SCHAPIRO: -- going to --

MR. BALABANIAN: -- him just yet.

MR. SCHAPIRO: Okay.

MR. BALABANIAN: I just gave it to him. I'm
not asking him about the exhibit yet.

BY THE WITNESS:

A. I'm sorry, so --

BY MR. BALABANIAN:

Q. So wouldn't you say that the terms are
more or less the same across the brands?

A. Yes.

(WHEREUPON, a certain document was
marked Brown Exhibit 5, for
identification.)

BY MR. BALABANIAN:

Q. I've handed you what's been marked as
Brown Exhibit 5.

A. Okay.

Q. Could you mark it?

A. Yes.

Q. And take your time to review the
document --

A. Thank you.

Q. -- to familiarize yourself with it,

1 MICHAEL BROWN

2 please.

3 A. Thank you, sir.

4 Q. You've got to give me one second. These
5 don't have page numbers on them, so bear with me.

6 A. Sure.

7 Q. Do you recognize Brown Exhibit 5,
8 Mr. Brown?

9 A. I have a -- I know where this is -- come
10 from.

11 Q. Okay. Can you tell me what you think it
12 is?

13 A. This is an XML file containing the
14 different pieces of the terms of service or URL
15 agreement for multiple brands in multiple languages.

16 Q. Okay. And are these the terms of service
17 that govern the installation of OSSProxy and
18 MacMeter?

19 A. It is the terms of service that govern,
20 yes.

21 Q. Okay. I'd like to just go through some
22 of the points on it, because I'm very unclear on
23 certain things.

24 A. Sure.

25 MR. SCHAPIRO: Objection.

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MICHAEL BROWN

BY MR. BALABANIAN:

Q. First of all, who would you say these terms of service are between?

A. They're between the analysts and the brand they signed up for.

Q. Okay. Do you know if comScore is referenced in these terms of service?

A. Do you mind if I take a look, sir?

Q. Sure. And I'll give you a hint. In the first paragraph, I know comScore's referenced, so there's one spot, but you can keep looking.

A. There you go, so, yes, comScore is referenced.

Q. And just so you know, I'm going to concentrate on the first six pages of this document.

A. Thank you. I would struggle with the Chinese version.

Q. As would I. I have my problems with the English version as well.

Do you see in the second paragraph on the very first page, the sentence that says, "While participation in our program will allow us to send you periodic surveys and track information about your online activity, such as where you surf and" --

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1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF W I L L)

4
5 I, JENNIFER L. WIESCH, do hereby certify:

6 That I am a duly qualified Certified
7 Shorthand Reporter, in and for the State of
8 Illinois, holder of certificate number 84-4528,
9 which is in full force and effect, and that I am
10 authorized to administer oaths and affirmations;

11 That the foregoing deposition testimony
12 of the herein named witness was taken before me at
13 the time and place herein set forth;

14 That prior to being examined, the witness
15 named in the foregoing deposition was duly sworn or
16 affirmed by me, to testify the truth, the whole
17 truth, and nothing but the truth;

18 That the testimony of the witness and all
19 objections made at the time of the examination were
20 recorded stenographically by me, and were thereafter
21 transcribed under my direction and supervision;

22 That the foregoing pages contain a full,
23 true and accurate record of the proceedings and
24 testimony to the best of my skill and ability;

25 That prior to the completion of the

1 foregoing deposition, review of the transcript was
2 requested.

3 I further certify that I am not a
4 relative or employee or attorney or counsel of any
5 of the parties, nor am I a relative or employee of
6 such attorney or counsel, nor am I financially
7 interested in the outcome of this action.

8
9 IN WITNESS WHEREOF, I have subscribed my
10 name this 22nd day of August, 2012.

11
12 _____
13 JENNIFER L. WIESCH, CSR No. 84-4528
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